

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BIAGIO TUFO, et al.,

Plaintiffs,

V.

NTH CONNECT TELECOM, INC., et al.,

Defendants.

Case No. 15-cv-02511-MEJ

**ORDER VACATING CMC
CASE MANAGEMENT ORDER**

Pursuant to Federal Rule of Civil Procedure 16, the Court issues the following Case

Management Order. Failure to comply with this Order is cause for sanctions under Rule 16(f). The September 3, 2015 Case Management Conference is VACATED. All questions should be directed to Rose Maher, Courtroom Deputy, at (415) 522-4708.

SUMMARY OF CASE MANAGEMENT DEADLINES

Deadline to Seek Leave to Amend Pleadings	11/6/2015
Disclosure of Expert Witnesses	1/5/2016
Disclosure of Rebuttal Expert Witnesses	1/15/2016
Close of Discovery	2/2/2016
Deadline to File Dispositive Motions	3/3/2016
Hearing on Dispositive Motions	4/7/2016 at 10:00 a.m.
Exchange of Pretrial Disclosures	6/15/2016
Deadline to File Pretrial Conference Statement and Related Disclosures, Motions in Limine, and Trial Briefs and Related Documents	6/30/2016
Deadline to File Motions in Limine Oppositions	7/7/2016
Pretrial Conference	7/21/2016 at 10:00 a.m.
Final Pretrial Conference	8/18/2016 at 10:00 a.m.
Trial	8/29/2016 at 9:30 a.m. (Duration: 3 days)

PRETRIAL INSTRUCTIONS

1 **A.** **ADR:** The parties are referred to mediation.

2 **B.** **Deadline to Seek Leave to Amend Pleadings:** November 06, 2015.

3 **C.** **Discovery:** The parties shall abide by the undersigned's Discovery Standing Order,

4 available at <http://cand.uscourts.gov/mejorders>. All discovery, including depositions of expert

5 witnesses, must be completed by February 02, 2016. Pursuant to Rule 16(b) and Civil Local Rule

6 26-2, a discovery request or stipulation that calls for responses or depositions after the discovery

7 cut-off date is not enforceable except by order of the Court and upon a showing of good cause. No

8 discovery disputes may be brought to the Court's attention more than seven (7) days after the

9 discovery cut-off date.

10 **D.** **Disclosure of Expert Witnesses:** Any party wishing to present expert witness testimony

11 shall serve on all other parties the expert's name, address, qualifications, resume, and a written

12 report in compliance with Rule 26(a)(2)(B) by January 05, 2016. This disclosure must be made

13 with respect to a person who is either: (a) specifically retained or specially employed to provide

14 expert testimony pursuant to Federal Rule of Evidence 702; or (b) a regular employee or agent or

15 treating physician who may be called to provide expert opinion testimony. All parties have a

16 continuing duty to supplement the disclosure of expert witnesses when required under Rule

17 26(e)(1).

18 **E.** **Disclosure of Rebuttal Expert Witnesses:** Any expert testimony intended solely to

19 contradict or rebut another party's opinion testimony shall be disclosed in compliance with Rule

20 26(a)(2)(B) by January 15, 2016.

21 **F.** **Limitation on Testimony by Expert Witnesses:** Each party is limited to one expert

22 witness in each discipline involved in the case, except by order of the Court. To ensure that all

23 factual material (including tests and/or reports) upon which expert opinion may be based is timely

24 disclosed, an expert witness shall be precluded from testifying about any actions or opinions not

25 disclosed prior to the expert's deposition, unless the parties enter into a written stipulation

26 otherwise. Any party objecting to the admissibility of expert testimony must file a motion in

27 limine to exclude the testimony by the deadline set forth below.

1 **G. Pretrial Motions:** All pretrial motions shall be filed in accordance with Civil Local Rule 7
2 and noticed for hearing on any available Thursday at 10:00 a.m., without contacting the Court.
3 All dispositive motions shall be filed, served, and noticed by March 03, 2016. The Court shall
4 hear dispositive motions on April 07, 2016 at 10:00 a.m. in Courtroom B, located on the 15th
5 Floor of the Federal Building, 450 Golden Gate Avenue, San Francisco, California.

6 All summary judgment motions shall comply with the following requirements for
7 statements of facts:

8 (1) Separate Statement of Facts: Any party filing a motion for
9 summary judgment must file a statement, separate from the motion
10 and memorandum of law, setting forth each material fact on which
11 the party relies in support of the motion. Each material fact in the
12 separate statement must be set forth in a separately numbered
13 paragraph and must refer to a specific admissible portion of the
14 record where the fact finds support (for example, affidavit,
15 deposition, discovery response, etc.). A failure to submit a separate
16 statement of facts in this form may constitute grounds for denial of
17 the motion.

18 (2) Controverting Statement of Facts: Any party opposing a motion
19 for summary judgment must file a statement, separate from that
20 party's memorandum of law, setting forth: (a) for each paragraph of
21 the moving party's separate statement of facts, a correspondingly
22 numbered paragraph indicating whether the party disputes the
23 statement of fact set forth in that paragraph and a reference to the
24 specific admissible portion of the record supporting the party's
25 position if the fact is disputed; and (b) any additional facts that
26 establish a genuine issue of material fact or otherwise preclude
27 judgment in favor of the moving party. Each additional fact must be
28 set forth in a separately numbered paragraph and must refer to a
specific admissible portion of the record where the fact finds
support.

29 (3) Reply Statement of Facts: If the party opposing summary
30 judgment sets forth additional facts, the moving party shall file a
31 statement, separate from the reply brief, with correspondingly
32 numbered paragraphs indicating whether the party admits or
33 disputes the statement of fact set forth in that paragraph and, if
34 disputed, a reference to the specific admissible portion of the record
35 supporting the party's position. Facts that are not already included
36 in the motion and/or opposition are not permitted.

37 (4) Alternative Procedure: As an alternative to filing a statement of
38 facts and controverting statement of facts, the movant and the party
39 opposing the motion may jointly file a stipulation signed by the
40 parties setting forth a statement of the stipulated facts and the
41 following statement: "The parties agree there is no genuine issue of
42 any material fact." As to any stipulated facts, the parties so
43 stipulating may state that their stipulations are entered into only for

1 the purpose of the motion for summary judgment and are not
2 intended to be otherwise binding.

3 **H. Exchange and Filing of Pretrial Disclosures:** By June 15, 2016, lead counsel who will
4 try the case shall meet and confer with respect to the preparation and content of the joint pretrial
5 conference statement and shall exchange the papers described in Rule 26(a)(3). These papers
6 must be filed with the Court by June 30, 2016.

7 **I. Joint Pretrial Conference Statement:** By June 30, 2016, the parties shall file a joint
8 pretrial conference statement with the following information:

9 (1) Substance of the Action: A brief description of the substance of
10 claims and defenses which remain to be decided.

11 (2) Relief Prayed: A detailed statement of all the relief claimed,
12 particularly itemizing all elements of damages claimed as well as
13 witnesses, documents or other evidentiary material to be presented
14 concerning the amount of damages.

15 (3) Undisputed Facts: A plain and concise statement of all relevant
16 facts not reasonably disputable, as well as which facts parties will
17 stipulate for incorporation into the trial record without the necessity
18 of supporting testimony or exhibits.

19 (4) Disputed Factual Issues: A plain and concise statement of all
20 disputed factual issues which remain to be decided.

21 (5) Disputed Legal Issues: Without extended legal argument, a
22 concise statement of each disputed point of law concerning liability
23 or relief, citing supporting statutes and decisions.

24 (6) Agreed Statement: A statement assessing whether all or part of
25 the action may be presented upon an agreed statement of facts.

26 (7) Stipulations: A statement of stipulations requested or proposed
27 for pretrial or trial purposes.

28 (8) Amendments or Dismissals: A statement of requested or
proposed amendments to pleadings or dismissals of parties, claims,
or defenses.

(9) Estimated Time of Trial: An estimate of the number of hours
needed for the presentation of each party's case.

(10) Bifurcation or Separate Trial of Issues: A statement of whether
bifurcation or a separate trial of specific issues is feasible and
desired.

(11) Settlement: A statement summarizing the status of the parties'
settlement negotiations and indicating whether further negotiations
are likely to be productive.

1 **J. Witness list:** A witness list shall be provided as an appendix to the joint pretrial conference
2 statement. The following information should be included. For each party, a list of all witnesses to
3 be called for trial, including those appearing by deposition. For each witness, a statement of the
4 substance of his or her testimony and an estimate regarding the length of testimony (including
5 direct and cross-examination).

6 If the witness is an expert witness, the statement should clearly state the expert's theories
7 and conclusions and the bases therefor, which shall also specify to which disputed fact the
8 testimony relates, and an estimate of the time required for direct and cross examination. In
9 addition, the expert's curriculum vitae and report (if any) should be attached. If there are
10 objections to a live witness's testimony, whether in whole or in part, that objection should be
11 raised through a motion in limine.

12 No party shall be permitted to offer any witness that is not disclosed in its witness list,
13 except with leave of the Court for good cause shown.

14 **K. Exhibit list:** A joint list of all exhibits to be offered at trial shall be provided as an
15 appendix to the joint pretrial conference statement. Plaintiff(s) shall mark the exhibits
16 numerically; Defendant(s) shall mark the exhibits alphabetically. The list shall state each
17 proposed exhibit by its number or alphabetical letter, description and sponsoring witness. All
18 documents shall be authenticated prior to trial. The list shall include a joint exhibit list in tabular
19 form, with (a) a column that briefly describes the exhibit; (b) a column that describes for what
20 purpose the party will offer the exhibit and identifies its sponsoring witness; (c) a column that
21 states any objections to the exhibit; (d) a column that briefly responds to the objections; and (e) a
22 blank column for the Court's use. Before this list is filed, the parties shall meet and confer, in
23 person, to consider eliminating duplicate exhibits, and to make a good faith effort to stipulate to
24 admissibility. No party shall be permitted to offer any exhibit that is not disclosed in its exhibit
25 list

26 **L. Use of Discovery Responses:** Excerpts of interrogatory responses, responses to requests
27 for admission, and deposition testimony (with specific line references identified) that each party
28 intends to present at trial shall be included as an appendix to the joint pretrial conference

1 statement. If there are objections to the use of written responses, the parties should include a joint
2 memorandum that briefly states the objecting party's objection and the opposing party's response.
3 If there is an objection to the general subject matter of a deponent's testimony, the objection
4 should be made through a motion in limine. The Court expects the parties to meet and confer in
5 good faith in an attempt to resolve specific objections before any statements are filed.

6 **M. Motions in limine:** The parties are directed to meet and confer in person to resolve any
7 evidentiary disputes prior to filing motions in limine. Any motions in limine shall be filed by June
8 30, 2016, with oppositions due by July 07, 2016. Each motion in limine should address a single
9 topic and contain no more than seven pages of briefing per side. Reply briefs are not permitted.

10 **N. Trial Briefs:** Each party shall file a trial brief, not to exceed 15 pages absent Court order,
11 by June 30, 2016. The trial briefs shall: (1) summarize the party's theory of the case; (2) identify
12 key evidence; and (3) provide the applicable legal standard, pursuant to Ninth Circuit authority,
13 for all controlling issues of law, including foreseeable procedural and evidentiary issues.

14 **O. Voir Dire:** In a jury trial, the parties shall file a joint set of requested voir dire to be posed
15 by the Court, as well as any separate questions upon which counsel cannot agree, by June 30,
16 2016. These shall also be submitted to the Court on a portable storage device (such as a USB
17 thumb drive) in Microsoft Word format. Any question on which the parties cannot agree shall be
18 marked as "disputed" and included within the joint set. Counsel will be allowed brief follow-up
19 voir dire after the Court's questioning.

20 **P. Jury Instructions:** In a jury trial, the parties shall file a joint set of proposed jury
21 instructions by June 30, 2016. These shall also be submitted to the Court on a portable storage
22 device in Microsoft Word format. Jury instructions should conform to the Manual of Model Civil
23 Jury Instructions for the Ninth Circuit. The instructions shall be ordered in a logical sequence,
24 together with a table of contents. Any instruction on which the parties cannot agree shall be
25 marked as "disputed" and included within the jointly submitted instructions, in the place where the
26 party proposing the instruction believes it should be given. Argument for and against each
27 disputed instruction shall be included on a separate page directly following the disputed
28 instruction. At the close of Defendant's case in chief the Court shall hear oral argument on the

1 disputed jury instructions and will then render its rulings.

2 **Q. Proposed Verdict Forms:** In a jury trial, the parties shall file a joint proposed verdict form
3 by June 30, 2016. If the parties are unable to stipulate to a verdict form, then each party or side
4 shall submit a proposed verdict form. The parties shall also submit the forms to the Court on a
5 portable storage device.

6 **R. Proposed Findings of Fact and Conclusions of Law:** In a bench trial, each party shall
7 file proposed findings of fact and conclusions of law by June 30, 2016. The parties shall also
8 submit the proposed findings to the Court on a portable storage device.

9 **S. Pretrial Conferences:** The Court shall hold an initial pretrial conference on July 21, 2016
10 at 10:00 a.m., in Courtroom B, 15th Floor, 450 Golden Gate Avenue, San Francisco, California.
11 Lead counsel who will try the case must attend the pretrial conference. The purpose of the pretrial
12 conference is for the Court to rule on any issues raised in the pretrial conference statement,
13 motions in limine, and to discuss the trial of the case. The Court shall hold a final pretrial
14 conference on August 18, 2016 at 10:00 a.m. in Courtroom B, to address any outstanding trial
15 issues.

16 **T. Trial:** The Court shall conduct a jury trial in this matter. The trial shall commence on
17 August 29, 2016 (Trial schedule: Monday through Friday, 9:30 a.m. to 3:30 p.m.), and last 3 days.
18 In a jury trial, jury selection begins at 9:30 a.m. on the first day of trial.

19 For any documents that will be shown to a witness but not admitted into evidence, counsel
20 shall bring the original plus three copies of the documents. The original document will be handed
21 to the Court during testimony and the copies will be given to the witness and opposing counsel
22 during examination.

23 The parties shall maintain their own exhibits during trial. Plaintiff(s) shall mark the
24 exhibits numerically; Defendant(s) shall mark the exhibits alphabetically. Exhibits must be
25 premarked with tags attached to the upper left-hand corner. Sample tags may be obtained from the
26 Courtroom Deputy and are attached hereto. If a photo or chart is being used as an exhibit, the
27 exhibit tag should be placed on the back side of the exhibit. The Court will only admit pre-marked
28 exhibits which were listed on the earlier filed exhibit list. On the day of trial, counsel shall bring

1 the original pre-marked exhibits plus two copies, one for opposing counsel and one (in binders
2 with appropriate label dividers) for the Court. The exhibit binders are to be given to the
3 Courtroom Deputy on the morning of the trial.

4 **U. Transcripts and Courtroom Technology:**

5 1) Any party requesting a daily transcript and/or real time reporting shall contact
6 Debra Campbell, Supervisor Court Reporting Services, at (415) 522-2079, at least 14 days in
7 advance of the trial date.

8 2) All parties are instructed to review the information regarding the use of courtroom
9 technology and electronic evidence presentation, which is provided on the Court's web site at
10 <http://cand.uscourts.gov/courtroomtech>, and to prepare accordingly. Questions and/or requests to
11 pre-test equipment should be sent to the courtroom deputy.

12 If any party will utilize their own video recording equipment or demonstrative devices, a
13 signed order will need to be obtained at least 14 days in advance of the trial or hearing date for the
14 items to clear security.

15 **IT IS SO ORDERED.**

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17 Dated: August 28, 2015

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MARIA-ELENA JAMES
United States Magistrate Judge

